



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: City of Martinsburg
P.O. Box 828
232 North Queen Street
Martinsburg, WV 25402

DATE: April 4, 2013

ORDER NO.: 7784

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. to City of Martinsburg (hereinafter "Martinsburg").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Martinsburg operates a combined sewer collection system and an existing 3.0 million gallon per day trickling filter wastewater treatment facility located in The City of Martinsburg, Berkeley County, West Virginia. Martinsburg was issued WV/NPDES Water Pollution Control Permit No. WV0023167 on December 27, 2007.
2. On April 29, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of Martinsburg's WV/NPDES permit was observed and documented:

- a. Section C.21 – Discharge from Outfall 001 caused a visible plume in Tuscarora Creek, creating conditions not allowable in waters of the State.

As a result of the aforementioned violation, Notice of Violation (NOV) No. CM-TJA-042910-001 was issued to Martinsburg.

3. On June 1, 2010, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of Martinsburg's WV/NPDES permit was observed and documented:

- a. Section A.001 – Two (2) fecal coliform samples were collected at Outfall 001, and two (2) fecal coliform samples were split from a sterilized container filled at Outfall 001. Analysis of the samples collected at the Outfall resulted in 4,400 and 4,200 counts/100 mL, and analysis of the split sample resulted in 4,700 and 5,600 counts/100 mL. The geometric mean of these samples resulted in 4,697 counts/100 mL, which exceeds the maximum daily permit limit of 400 counts/100 mL.

As a result of the aforementioned violation, NOV No. CM-TJA-060110-001 was issued to Martinsburg.

4. On August 1, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Martinsburg's WV/NPDES permit were observed and documented:
 - a. Appendix A.III.2.a. – Discharge Monitoring Reports (DMRs) were submitted for the City of Martinsburg Water Plant (IU02) using a form from the previous permit, which expired December 17, 2007.
 - b. Appendix A.III.2.c – Upon a review of records, it was determined that analysis of the January 2012 IU02 Filter Backwash sample resulted in an aluminum concentration of 27.3 mg/L. This value exceeds the permitted maximum daily limit of 10 mg/L. Because an expired DMR form, with an incorrect limit of 30 mg/L, was used, no permit exceedance was listed on the submitted DMR.
 - c. 47CSR58 Section 4.7.d – Polymer containing drums lacking secondary containment were observed outside the sludge belt press and headworks buildings.
 - d. 47CSR58 Section 7.1 – A leaking steel drum containing polymer was observed outside the sludge belt press building.
 - e. Appendix A.II.3.b – On June 29, 2012, a bypass occurred as a result of losing power from the emergency backup generator.
 - f. Section A.001 – A fecal coliform sample was collected immediately after disinfection. Sample analysis resulted in an estimated concentration of 1100 counts/100 mL. This value exceeds the maximum daily permit limit of 400 counts/100 mL.

As a result of the aforementioned violations, NOV No. CM-TJA-080112-001 was issued to Martinsburg.

5. On September 1, 2012, WVDEP personnel conducted a review of facility records from the time period of August 2010 through August 2012. During this review, the following

violations of the terms and conditions of Martinsburg's WV/NPDES permit (Section A.001) were observed:

- a. Nine (9) exceedances of Martinsburg's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-eight (8)
 - ii. Moderate violations-one (1)
6. On February 27, 2013, WVDEP personnel and representatives of Martinsburg met to discuss the terms and conditions of this Order. During the meeting, Martinsburg represented the following:
- a. The June 29, 2012 bypass occurred as a result of the Derecho storm event. Loss of power, and the consequential lack of post-aeration, led to Martinsburg's July 2012 Dissolved Oxygen (D.O.) exceedance. At the time of the power loss, the facility was being properly operated and maintained, and appropriate treatment/remediation measures were established in response to the electrical failure.
 - b. On August 20, 2012, in correspondence to WVDEP personnel, Martinsburg requested utilization of an excursion allowance for the July 2012 Maximum Daily Fecal Coliform exceedance. WVDEP agrees that the excursion was allowable, in accordance with Section A.001 of Martinsburg's WV/NPDES permit; therefore, the exceedance shall not be penalized.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Martinsburg shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Martinsburg shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Martinsburg will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
Compliance Monitoring
PO Box 662
Teays, WV 25569**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Martinsburg's permit violations, Martinsburg shall be assessed a civil administrative penalty of fifteen thousand eight hundred thirty dollars (\$15,830) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Martinsburg hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Martinsburg agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Martinsburg does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Martinsburg other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Martinsburg shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due

diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Martinsburg becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Martinsburg shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Martinsburg intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Martinsburg (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Martinsburg of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Martinsburg to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Martinsburg, its successors and assigns.
7. This Order shall terminate upon Martinsburg's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Mark S. Baldwin 4/11/13
City of Martinsburg
Mark S. Baldwin, City Manager

4/11/13
Date

Public Notice begin:

RECEIVED

Date

Public Notice end:

APR 15 2013

ENVIRONMENTAL
ENFORCEMENT

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

Table One:
Martinsburg DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - August / 2010 through August / 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
01 / 2011	BOD5	mg/L	30	35.6	19%	X	-	-
10 / 2011	BOD5	mg/L	20	21.82	9%	X	-	-
02 / 2012	BOD5	mg/L	30	38.57	29%	X	-	-
05 / 2012	BOD5	mg/L	20	27.82	39%	X	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - August / 2010 through August/ 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance			
						Min	Mod	Maj
05 / 2012	BOD5	mg/L	40	44.59	11%	X	-	-
05 / 2012	TSS	mg/L	60	88	47%	X	-	-
07 / 2012	Fecal Coliform	Cts/100 ml	400	560	40%	X	-	-
08 / 2012	Fecal Coliform	Cts/100 ml	400	804	101%	-	X	-

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS. MIN. - August / 2010 through August 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance			
						Min	Mod	Maj
07/ 2012	D.O.	mg/l	6.0	5.29	11.8%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	8	1	0

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

City of Martinsburg

Receiving Stream:

Tuscarora Creek of Opequon
Creek of the Potomac River

Treatment System Design Maximum Flow: 3 MGD

Treatment System Actual Average Flow: 2.38 MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#												
			4.a	4.b	4.f	5.ai	5.a.ii								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	0	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	0	1	1	1	1								
d)	Length of Time	1 to 3	1	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1	1	1								
	Average Potential for Harm Factor		0.4	1	1	1	1	No	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	2	3	1	2								

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and $\leq 600\%$ or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
4.a	Minor	Minor	\$400	12	\$4,800
4.b	Minor	Moderate	\$1,500	1	\$1,500
4.f	Minor	Major	\$2,000	1	\$2,000
5.ai	Minor	Minor	\$1,000	6	\$6,000
5.a.ii	Minor	Moderate	\$1,500	1	\$1,500
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$15,800

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -			\$0
6.2.b.4 - Compliance/noncompliance history	10		\$1,580
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$0	\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$1,580)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$15,830

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments:	

April 12, 2013

West Virginia Department of Environmental Protection
Division of Water and Waste management
ATTN: Michael A. Zeto, Chief Inspector
601 57th Street SE
Charleston WV 25304-2345

RECEIVED

APR 15 2013

RE: City of Martinsburg;
WV/NPDES Permit No. WV0023167
Consent Order

ENVIRONMENTAL
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Dear Mr. Zeto:

Enclosed please find the original Consent Order as signed by Mark Baldwin for The City of Martinsburg.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Rose Aviles
Legal Assistant to Timothy P. Stranko

RA/ra

Enclosure